IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2581 OF 2007
IN
SUIT NO.3972 OF 2000

Bajaj Auto Finance Limited ....Plaintiff
Vs.
Sundeep Polymers Private Ltd. & Anr. ...Defendants

Ms. Snehal Shah i/b. Dhru & Co., for Plaintiff
Mr.Naveen Parekh with Mr. P.S. Gidwani for Defendants

CORAM: SMT. ROSHAN DALVI, J.
DATED: 29TH OCTOBER, 2007

P.C.

1. The suit has been filed for declaration that Rs.25,48,279.79 together with interest of Rs.1,22,14,384/- is due and payable by the Defendants to the Plaintiffs, for recovery of the said amount, for a declaration that the said amount is validly secured under a charge of the suit machineries and under a mortgage in respect of a suit properties. The suit is also for the ancillary relief of sale and realisation of the mortgaged property and injunction against disposal of the suit machinery as well as the suit immovable properties.

2. The parties have executed a indenture of mortgage by deposit of title deeds as well as a higher purchase finance agreement dated 23rd April, 1994. Upon the filing of the suit an order inter alia for appointment of Court Receiver in respect of the suit movable and immovable properties has been passed. The Receiver has determined the amount of royalty payable. The Defendants have paid the royalty from month to month.

3. 7 years after the filing of the suit this Notice of Motion has been taken out under the provisions of Order 7 Rule 11 (a) of the Civil Procedure Code to frame an issue thereunder. The ad-interim relief in the Notice of Motion is for fixing the peremptory date for expeditious disposal of the issue and for staying the payment of the royalty to the Court Receiver by the Defendants pursuant to the order in the earlier Notice of Motion dated 16th October, 2000.

4. It may at once be stated that issues in the suit are framed upon the disputed facts raised in the pleadings under the provisions of Order 14 of the Civil Procedure Code, and not under Order 7. A preliminary issue can be raised under Order 14 Rule 2 of the Civil Procedure Code as an issue of

law relating to jurisdiction of Court or bar created by any law.

5. It is argued on behalf of the Defendants, who have taken out this Notice of Motion, that the issue which is required to be framed relates to the bar created by the Bombay Money Lenders Act, 1946.

6. It is the case of the Defendants that the suit is for recovery of a loan amount though it is under the agreement styled as a higher purchase finance agreement and a charge is also created. It is contended that, therefore, the suit would fall within the mischief of Bombay Money Lenders Act and plaintiffs who have no license as moneylender would be debarred from suing thereunder. Upon this argument it is seen that the provisions of Order 11 Rule 7(d) cannot be invoked since that would result in the rejection of plaint upon the suit being barred by any law as seen from the statement in the plaint.

7. Mr. Parekh on behalf of the Defendants drew my attention to the averments in paragraphs 2,3 and 14 of the plaint. Paragraph 2 shows the position and the relationship of the parties. Paragraph 3 shows the Defendants desire to

avail finance from the Plaintiff and the fact that the Plaintiff lent money to the first Defendants under a higher purchase finance facility to enable the first Defendants to acquire certain machinery. The averments in paragraph 14 of the plaint show that further finance was required in respect of the machines and consequently a fresh higher purchase finance agreement was entered into. That was the agreement in the suit dated 23rd April, 1994.

8. It is contended that because these averments show that the Defendants needed loan from the Plaintiff, a suit is in respect of loan given by the Plaintiffs. Hence the Plaintiffs are money lenders and hence they should have obtained license which they have not and consequently they are barred from filing the suit as per the provisions contained in the Bombay Money Lenders Act, 1946. No specific provision under the said statute is shown to the Court under which a bar to the filing of the suit is statutorily created.

9. It is contended on behalf of the Plaintiffs that the suit is not only for recovery of money but also for enforcement of the mortgage. The machinery which were to be obtained by the Defendants pursuant to the funds granted by the Plaintiffs has been charged in favour of the Plaintiffs. It is

also contended that under the provisions of Section 2(9)(ee) of the Bombay Money Lenders Act, a loan to or by a Body Corporate is exempted from the definition of loan in the said Act. In this case the loan is given to as well as by incorporated companies. Consequently the Bombay Money Lenders Act does not apply.

10. Further under Section 10 of the Bombay Money Lenders Act the Court would not pass a decree in favour of a money lender to whom the Bombay Money Lenders Act applies unless he obtained the valid license, and if it is not obtained the Court is enjoined to dismiss the suit. There is no provision under Section 10 of the Bombay Money Lenders Act that there is any bar to the filing of the suit itself. Consequently a suit may be filed and a license may be obtained thereafter. If on the hearing of the suit it is not obtained, the suit would have to be dismissed. It may be mentioned that the marginal note to the said Section also does not show the bar to the filing of the suit. It is instead shows " stay of suits by money lenders not holding license".

11. The provisions of Order 7 Rule 10 for rejection of the plaint on the ground that it is barred by any law would require a specific bar created by a specific statute. This is

not one such bar. The preliminary issue required to be framed under Order 14 Rule 2 of the Civil Procedure Code can be invoked only for a question of law to be determined upon seeing a bar created by any law. As there is no bar created under the Money Lenders Act, and the said Act does not even apply to this suit which is filed by and against Body Corporates, no issue need be framed as a preliminary issue.

12. The Notice of Motion is entirely misconceived. The Notice of Motion is dismissed. No order as to costs.

(SMT. ROSHAN DALVI, J.)